

The Deed, not the Doer

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Maximilian Steinbeis Sa 3 Feb 2018

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“It’s all a matter of perspective,” said Poland’s new Prime Minister Mateusz Morawiecki over and over again when CNN interviewed him last week about Poland’s refugee, EU and justice policies. All a matter of perspective. Everything can be seen in different ways, depending on your angle. We are as undogmatic, complexity-aware and pluralistic as any of those western intellectuals out there, Morawiecki seems to signal, we out-liberal the liberals in terms of tolerance for competing versions of truth. That is how the renewed PiS government apparently wants to be perceived internationally, while it calmly keeps subjugating the formerly independent judiciary and turning the publication of undesirable opinions on the subject of Nazi collaboration in occupied Poland into a potential criminal offence.

We have seen that move before. This strategy of minimizing one’s own surface for attack and appropriating positions in a way that confuses and disorients one’s opponent is rather characteristic of that new and alarming phenomenon we call, for lack of a better term, right-wing populism. In Germany, the rankly extremist and anticonstitutional NPD ended up in insignificance, while the artfully ambiguous AfD scored third place in the latest federal elections. In France, the fearsome Jean-Marie Le Pen back in 2002 reunited *La Gauche* and *La Droite* in fierce opposition against him, whereas his smiling daughter Marine came within spitting distance of the presidency. To shake off the accusation of extremism and to appear “normal” instead is the way to success with an electorate that considers itself to be, first and foremost, normal – as in: the norm. And if you can spin those despised liberals dizzy on the way, those guardians of the abnormal and minorities, by purposeful appropriation of their values, methods and concepts, then it works all the more beautifully.

How to respond? It seems obvious to try to expose the true motives of these people. They just pretend! It’s all just a mask! They don’t show their true face, but we won’t be fooled, we know what they really look like, and we’ll tell anyone who doesn’t! Fair enough, but to try that is to essentialize the problem we have with these people into a matter of their nature. The problem they constitute is not their essential character, hidden or not, but their actions. It’s the deed that counts, not the doer. I don’t need to know whether Morawiecki has put on a mask or shows his true face when I hear him talking on television about diversity of perspectives. It is enough to know what his government is doing – to the independence of the judiciary, to freedom of communication and to freedom of science when it comes to talking about possibly dishonourable aspects of Polish history.

On the other hand, it would also be a mistake to take the populists’ strive for normality at face value, of course. Whether they preach pluralism, democracy and diversity of opinion is not the yardstick. It’s what they do once they’re in power.

We shall know them by their deeds. We have tons of experience from Poland, Hungary, Russia and elsewhere at our hands to make use of and sharpen our distinctiveness with.

To learn to distinguish when we listen to our own politicians speak as, for the time being, it's only words we can know them by, due to their temporary lack of power to act. Particularly as it seems to become increasingly difficult from the other side, too, to say what exactly distinguishes, say, Markus Söder's CSU from Gauland's AfD and Laurent Wauquiez' *Républicains* from Le Pen's FN.

In my last editorial, I proposed a "Project Waterproof": to study the deeds of the governments in Poland, Hungary, etc. and to compare them with our own legal and constitutional system in order to find and mend possible leaky points while the majority required for that is still there. However, the finding and mending of leaky points is only one reason why I consider such a project of comparative constitutionalism to be necessary. Another is the said sharpening of our distinctiveness, so that we don't get dizzy so easily when Morawiecki or somebody else whirls about on his dance of the seven perspectives.

The so-called populists are all learning from each other. Just as Orbán learned from Putin, Kaczyński learns from Orbán and Dragnea from Kaczyński and our own populists from them all. Why don't we start doing the same?

Internal issues

In the **German Bundestag**, the AfD will chair three committees during the current legislative period, among them the important Committee on Legal Affairs, which will be headed by a person named Stephan Brandner, who as a Member of the Thuringian *Landtag* has earned himself a reputation as a particularly reck- and ruthless spinner of perspectives and originator of liberal dizziness and despair. Whether and to what extent he will be able to continue this activity in his future role is a question of parliamentary law which I would be keen to hear the answer to. What German party law, in its turn, has to tell the AfD about the lawfulness of firing the complete executive committee of its regional suborganisation in the state of Lower Saxonia, is examined by SOPHIE SCHÖNBERGER to the result that the AfD had thus "clearly demonstrated its authoritarian understanding of party organization, which also reveals an internal democratic deficit" (in German).

The afore-mentioned law in **Poland** to penalize not only the slanderous expression "Polish concentration camps", but also the linking of Nazi crimes to the Polish state or nation, has provoked a massive wave of international protest, particularly from Israel. ALEKSANDRA GLISZCZYŃSKA-GRABIAS and WOJCIECH KOZŁOWSKI describe the background of this law and its potentially fatal consequences for freedom of opinion and research.

In **Romania**, tens of thousands of people have taken to the streets in recent weeks because they have reason to believe that their independent judiciary will be taken down the same road as the one in Poland, as the ruling party PSD seeks to pursue its corrupt business without judicial hindrance. BIANCA SELEJAN GUTAN reports how this came about and what is behind it.

In **China**, 1.4 billion people are governed from a single center, as they have been for more than 2000 years. This works so badly that QIANFAN ZHANG wants to use his year as a Fellow at the Berlin *Wissenschaftskolleg* to study German federalism as a possible model for decentralized decision-making structures. I have seldom learned as much from an

interview as I did from talking to Professor Zhang who didn't mince words in criticizing the dysfunctionalities and shortcomings of the constitutional set-up of his much-admired and much-feared country.

In **Slovakia**, President and Prime Minister have been wrestling with each other for years over the nomination of three constitutional judges. According to MICHAL OVÁDEK, the year 2018 is likely to be fateful for the Slovak Constitutional Court with numerous other personnel decisions to be taken.

In the **United Kingdom**, the "European Union (Withdrawal) Act" is currently passing Parliament. In the land of Shakespeare, the constitutional way to confer comprehensive regulatory powers on the government by an act of Parliament is named a "Henry VIII clause". ALEXANDER MELZER explains what this is all about, how that ancient Tudor King and slayer of wives ended up a trope of constitutional law, and how that clause is reconciled with the principle of parliamentary sovereignty.

In **Germany**, the constitutional highlight of the week was a two-day hearing before the Federal Constitutional Court on the question of when psychiatric patients may be fixated in their beds for the protection of themselves or others. EIKE MICHAEL FRENZEL illuminates the legal and political background (in German).

Elsewhere

AMÉLIE HELDT compares the law against fake news on the Internet announced by **French** President Macron with the German Network Enforcement Act (in German).

JAVIER GARCIA OLIVA interprets the **Catalan** parliament's decision to not elect the fugitive/exiled secessionist Carles Puigdemont as president for the time being as a cautious signal to return to fidelity to the constitution, but not of an imminent end of uncertainty.

MARK ELLIOTT and STEPHEN TIERNEY analyse the harsh criticism of the "European Union (Withdrawal) Bill" by the Constitutional Committee of the **British** House of Lords.

CLAIRE POPPENWELL-SCEVAK is disappointed by the Strasbourg Human Rights Court's continued hesitation to acknowledge the right of same-sex couples to marry.

MANUEL MÜLLER does not share the enthusiasm of many Europhiles about the results of the exploratory talks of the prospective Grand Coalition in **Germany** and lists seven ways how the coalition could keep their promise of a "new departure for Europe".

KARAN LAHIRI examines the **Indian** Supreme Court's decision to overturn the ban imposed in a number of states on the movie *Padmaavat* that has drawn the wrath of Hindu extremists, and is not sure whether this verdict is "a reaffirmation of constitutional values, or, more cynically, as a grasping of low-hanging fruit in these fraught times for the Court".

ANNE PETERS considers that **Turkey's** invasion of the Kurdish-controlled Syrian region of Afrin is manifestly violating international law and an abuse of the right to self-defence, and is concerned about the consequences of the "silence of the lambs" in the international community.

So much for this week. In the next, schools will be closed in Berlin due to *Winterferien*, and I wouldn't mind to get some wintery fresh air exposure for myself, too, although the weather forecast predicts snow only down south, as usual, so I guess I'll hole up in drippy, muddy Uckermark with a book or two to read and the occasional blog post to upload and a log fire going, and see you back here next week!

By the way, we had a bit of a technical hitch with the registration for the newsletter lately. It's fixed now, so if you wish to receive this editorial in your mailbox, please register [here](#).

All best, and take care,

Max Steinbeis

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